



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N059; FXES11120000–156–FF08ECAR00]

**Endangered and Threatened Wildlife and Plants; Incidental Take Permit
Application; Proposed Low-Effect Habitat Conservation Plan and Associated
Documents; County of San Diego, California**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Main 16, LP. (applicant) for a 5-year incidental take permit for the endangered San Diego fairy shrimp pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the

preliminary determination that the proposed HCP qualifies as a “low-effect” Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760-431-9624.

Obtaining Documents: To request copies of the application, proposed HCP, and EAS, contact the Service immediately, by telephone at 760-431-9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen A. Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone 760-

431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Main 16, LP. (applicant) for a 5-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, Act). The application addresses the potential “take” of the endangered San Diego fairy shrimp in the course of activities associated with the construction of the Main 16, LP. Ramona commercial development project in unincorporated San Diego County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the proposed Habitat Conservation Plan (HCP) by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a “low-effect” Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the “take”

of animal species listed as endangered or threatened. Take is defined under the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in any such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found at 50 CFR 17.22 and 50 CFR 17.32.

The applicant requests a 5-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking San Diego fairy shrimp (*Branchinecta sandiegonensis*) as a result of permanent impacts to 0.01 acre (ac) of habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant’s activities associated with the construction of the Main 16, LP. Ramona commercial development project in San Diego County, California, and includes the purchase of two vernal pool/basin with fairy shrimp conservation credits (i.e., 0.2 ac of vernal pool basin and 1.8 ac of associated watershed) at the Ramona Grasslands Conservation Bank (Bank).

The Main 16, LP. Ramona project proposes to grade 2.5 ac to construct commercial buildings and an associated parking lot. The project would include all construction activities related to site preparation (grading and/or compaction), facilities

construction, and site finish (landscaping). The project will permanently impact 0.01 ac of ponded basin and associated watershed occupied by San Diego fairy shrimp as a result of the development activities.

To minimize take of San Diego fairy shrimp by the Main 16, LP. Ramona commercial development project and offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to approximately 0.01 ac of occupied San Diego fairy shrimp habitat through the purchase of two vernal pool/basin with San Diego fairy shrimp conservation credits at the Bank. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of development activities on the San Diego fairy shrimp:

- Grading limits will be delineated with construction fencing and silt fencing to ensure that impact limits do not extend beyond the allowed limits of development.
- A biologist will monitor grading of the site daily (or as determined necessary by the monitoring biologist) and provide a letter summarizing compliance with the construction limits of the proposed project to the Service within 1 month of completion of project grading.
- The project construction contractor will conduct grading outside the rainy season (October 1 through March 31). If grading is to be done after October 1 and ponding of the basins has not occurred, the applicant will submit a proposed grading strategy for review and approval by the Service that will ensure that indirect impacts are avoided to the existing basins located immediately adjacent to the project site. No grading will occur during this timeframe without written

concurrence from the Service.

- Avoidance of long-term indirect impacts to fairy shrimp-occupied basins immediately adjacent to the site will be achieved by ensuring that flows from the project site are directed away from basins immediately off site to the west and have been adequately treated through the use of best management practices (BMPs) during construction and throughout the life of the project. These BMPs include treating all flows on site through the use of a retention/infiltration basin prior to outletting into the storm drain system.

The above described impacts and mitigation will occur within designated critical habitat for the San Diego fairy shrimp. No other listed species or designated critical habitat occurs within the project site.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the San Diego fairy shrimp. If we approve the permit, take of San Diego fairy shrimp would be authorized for the applicant's activities associated with the construction of the Main 16, LP. Ramona commercial development project. In the proposed HCP, the applicant considers alternatives to the taking of San Diego fairy shrimp under the proposed action. Because of the small size of the site and the need to avoid both the basins and watershed of the basins, an alternative site plan that would have maintained some of the ponded basins on site (i.e., a reduced footprint alternative) was

not feasible. The Applicant also considered the No Action Alternative. Under the No Action Alternative, no San Diego fairy shrimp habitat would be impacted or conserved.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a “low-effect” plan as defined by the Habitat Conservation Planning Handbook (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats, including designated critical habitat;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of San Diego fairy shrimp.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal

identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**G. Mendel Stewart,
Field Supervisor,
Carlsbad Fish and Wildlife Office,
Carlsbad, California.**

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